

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RALF HARTMANN,

Plaintiff,

v.

GOOGLE LLC, YOUTUBE LLC,

Defendants.

Case No. 1:20-cv-05778-JPC

**ANSWER TO SECOND  
AMENDED COMPLAINT**

Defendants Google LLC and its wholly owned subsidiary YouTube, LLC (collectively, “Google”), by and through undersigned counsel, hereby and set forth their affirmative defenses to Plaintiff Ralf Hartmann’s (“Plaintiff”) Second Amended Complaint (“SAC”), according to its numbered paragraphs as follows:

Google interprets any headings to provide a roadmap to the allegations and not as allegations themselves. Google therefore does not provide a specific response to the headings. To the extent a response is required, Google denies any allegations contained therein.

**GENERAL DENIAL**

Except as otherwise expressly admitted herein, Google denies each and every allegation set forth in the SAC, including, without limitation, any allegations set forth in the preamble, headings, subheadings or footnotes of the SAC, and specifically denies any liability to Plaintiff. Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, allegations in the SAC to which no responsive pleading is required shall be deemed as denied. Google expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary, including the right to assert and rely upon any additional defenses as may be discovered, particularly because many of Plaintiff’s

allegations are incomprehensible, and Google should not be prejudiced by its inability to correctly discern such allegations.

### **RESPONSE TO SPECIFIC ALLEGATIONS**

AND NOW, incorporating the foregoing, Google states as follows in response to the specific allegations in the SAC:

### **NATURE OF THE ACTION**

1. This paragraph merely provides Plaintiff's purported description of Plaintiff's lawsuit and thus no answer is required. To the extent an answer is required, Google denies the allegations in Paragraph 1.

2. This paragraph merely provides Plaintiff's purported description of Plaintiff's lawsuit and thus no answer is required. To the extent an answer is required, Google denies the allegations in Paragraph 2.

### **PARTIES**

3. Google lacks sufficient information to admit or deny the allegations in Paragraph 3, and on that basis denies them.

4. Google admits that YouTube, LLC is a Delaware limited liability company whose headquarters are located in San Bruno, California.

5. Google admits that YouTube, LLC is a wholly owned subsidiary of Google LLC. Google admits that Google LLC is a Delaware limited liability company whose headquarters are located in Mountain View, California. Google admits that Google LLC conducts business in this judicial district. Google admits that Google LLC has a business address in the state of New York.

6. Google admits that it operates a website called “YouTube,” located at [www.youtube.com](http://www.youtube.com). Google lacks sufficient information to admit or deny the remaining allegations in Paragraph 6, and on that basis denies them.

7. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 7.

8. Google admits that Google LLC operates Google Play, which offers music, books, movies, and television shows. Google denies the remaining allegations in Paragraph 8.

### **JURISDICTION AND VENUE**

9. This paragraph states legal conclusions to which no response is required.

10. This paragraph states legal conclusions to which no response is required.

11. Google does not contest that this Court has personal jurisdiction over it, for the purposes of this action only. The remainder of Paragraph 11 states legal conclusions to which no response is required. To the extent a response is required, Google denies the allegations in Paragraph 11.

12. This paragraph states legal conclusions to which no response is required.

13. Google does not contest that this Court has personal jurisdiction over it, for the purposes of this action only. The remainder of Paragraph 13 states legal conclusions to which no response is required. To the extent a response is required, Google denies the allegations in Paragraph 13.

14. Google does not contest that venue is proper in this judicial district, for the purposes of this action only; however, this paragraph states legal conclusions to which no response is required.

**GENERAL ALLEGATIONS**

15. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 15, and on that basis denies them.

16. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 16, and on that basis denies them.

17. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 17, and on that basis denies them.

18. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 18, and on that basis denies them.

19. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 19, and on that basis denies them.

20. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 20, and on that basis denies them.

21. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 21, and on that basis denies them.

22. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 22, and on that basis denies them.

23. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 23, and on that basis denies them.

24. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 24, and on that basis denies them.

25. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 25, and on that basis denies them.

26. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 26, and on that basis denies them.

27. Google admits that Google Play is an online store that offers, among other things, films and television shows for rent or purchase. Google denies the remaining allegations in Paragraph 27.

28. Google admits that Google Play is accessible via the internet. Google denies the remaining allegations in Paragraph 28.

29. Google admits that Google Play can be accessed in the United States at <https://play.google.com/store?gl=US>, among other ways.

30. Google admits the allegations in Paragraph 30.

31. Google admits that Google Play is accessible to users in foreign countries. Google denies the remaining allegations in Paragraph 31.

32. Google admits that YouTube, LLC is a wholly owned subsidiary of Google LLC, and that users can buy or rent movies and shows on YouTube.

33. Google admits that users can browse available movies and shows at <https://www.youtube.com/movies>. Google denies the remaining allegations in Paragraph 33.

34. Google admits that YouTube's movie catalog is available to users in various countries via the internet. Google denies the remaining allegations in Paragraph 34.

35. Google admits that it owns and operates data centers inside and outside of the United States.

36. Google lacks sufficient information to admit or deny the allegations in Paragraph 36, and on that basis denies them.

37. Google denies the allegations in Paragraph 37.

38. Google denies the allegations in Paragraph 38.

39. Google denies the allegations in Paragraph 39.

40. Google denies the allegations in Paragraph 40.

41. Google denies the allegations in Paragraph 41.

42. Google denies the allegations in Paragraph 42.

43. Google denies the allegations in Paragraph 43.

44. Google denies the allegations in Paragraph 44.

45. Google denies the allegations in Paragraph 45.

46. Google denies the allegations in Paragraph 46.

47. Google denies the allegations in Paragraph 47.

48. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 48.

49. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 49.

50. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 50.

51. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 51.

52. Google denies the allegations in Paragraph 52.

53. Google denies the allegations in Paragraph 53.

54. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 54.

55. This paragraph states legal conclusions to which no response is required. To the extent a response is required, Google lacks sufficient information to admit or deny the allegations in Paragraph 55 at this early stage of the proceedings, and on that basis denies them.

56. Google denies the allegations in Paragraph 56.

57. Google lacks sufficient information to admit or deny the allegations in Paragraph 57 at this early stage of the proceedings, and on that basis denies them.

58. Google denies the allegations in Paragraph 58.

59. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 59.

60. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 60.

61. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 61.

62. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 62.

63. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 63.

64. Google denies the allegations in Paragraph 64.

65. Google lacks sufficient information to admit or deny the allegations in Paragraph 65 at this early stage of the proceedings, and on that basis denies them.

66. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 66.

67. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 67.

68. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google admits that *Austin Powers* and *Drop Dead Gorgeous* were available via Google Play into 2018. Google denies the remaining allegations in Paragraph 68.

69. Google lacks sufficient information to admit or deny the allegations in Paragraph 69 at this early stage of the proceedings, and on that basis denies them.

70. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 70.

71. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 71.



72. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 72.

73. Google denies the allegations in Paragraph 73.

74. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 74.

75. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 75.

76. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 76.

77. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 77.

78. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 78.

79. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 79.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Direct Infringement of Copyright in the United States**

80. Google hereby incorporates by reference its responses to Paragraphs 1 through 79 as if fully stated herein.

81. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 81.

82. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 82.

83. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 83.

84. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 84.

85. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 85.

86. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 86.

87. This paragraph states legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations in Paragraph 87.

#### **COUNTS II, III, IV AND V**

Counts II, III, IV, and IV were dismissed pursuant to the Court's Memorandum Opinion and Order dated March 8, 2022. (Dkt. No. 49). Accordingly, no response to those Counts is required. Further, those Counts state legal conclusions to which no response is required. To the extent an answer is required, Google denies the allegations.

#### **ANSWER TO PRAYER FOR RELIEF**

Google denies that Plaintiff is entitled to any relief in this action.

#### **DEMAND FOR A JURY TRIAL**

Google admits that Plaintiff purports to demand a trial by jury of all issues so triable.

**AFFIRMATIVE DEFENSES**

Google asserts the following affirmative defenses to Plaintiff's Second Amended Complaint ("SAC"). By asserting the defenses below, Google does not concede, and reserves its right to dispute, that the defenses are affirmative defenses for which Google bears the burden of proof. Google also reserves the right to supplement or amend these defenses as discovery proceeds, and does not knowingly or intentionally waive any applicable affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE**  
**(Failure to State a Cause of Action)**

88. The SAC, and each cause of action stated therein, is barred in whole or in part because Plaintiff failed to state a claim against Google for which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**  
**(Standing)**

89. The SAC, and each cause of action stated therein, is barred in whole or in part because Plaintiff lacks standing as he does not own the alleged copyrights at issue and/or does not possess valid registrations for such copyrights.

**THIRD AFFIRMATIVE DEFENSE**  
**(License)**

90. The SAC, and each cause of action stated therein, is barred in whole or in part because Google obtained valid licenses for the conduct alleged in the SAC.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Statute of Limitations)**

91. The SAC, and each cause of action stated therein, is barred in whole or in part by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

92. The SAC, and each cause of action stated therein, is barred in whole or in part by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Non-Willful Infringement)**

93. Plaintiff's claims for statutory damages are limited because Plaintiff cannot prove willfulness pursuant to 17 U.S.C. § 504(c)(2).

**SEVENTH AFFIRMATIVE DEFENSE**  
**(No Entitlement to Statutory Damages)**

94. Plaintiff's claims for statutory damages are barred and/or limited because Plaintiff failed to comply with the statutory prerequisites for such damages, including those pursuant to 17 U.S.C. §§ 412 and 504.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Costs and Attorney's Fees)**

95. Plaintiff's claims for costs and attorneys' fees are barred because Plaintiff does not meet the statutory prerequisites of the Copyright Act for such an award and cannot prove the requisite state of mind or culpability on the part of Google.

**NINTH AFFIRMATIVE DEFENSE**  
**(Licensing)**

96. The SAC, and each cause of action stated therein, is barred in whole or in part because Google was given a legal right to use the works at issue.

**TENTH AFFIRMATIVE DEFENSE**  
**(De Minimis Copying)**

97. The SAC, and each cause of action stated therein, is barred in whole or in part because any alleged copying of the works was *de minimis*.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Fair Use)**

98. The SAC, and each cause of action stated therein, is barred in whole or in part because Plaintiff's claims are barred by the doctrine of fair use.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(Limit to Statutory Damages)**

99. The SAC, and each cause of action stated therein, is barred in whole or in part because any alleged infringement by Google occurred when Google was not aware and had no reason to believe that its acts constituted an infringement of copyright.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Consent)**

100. The SAC, and each cause of action stated therein, is barred in whole or in part by the doctrines of acquiescence and consent.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Waiver)**

101. The SAC, and each cause of action stated therein, is barred in whole or in part by the doctrines of laches, acquiescence, waiver, and judicial and/or equitable estoppel.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Third Party Liable for Conduct Alleged)**

102. The SAC, and each cause of action stated therein, is barred in whole or in part because Plaintiff has not suffered any damage or injury as a result of any act or conduct by Google.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Due Process)**

103. The SAC, and each cause of action stated therein, is barred in whole or in part because the aggregated statutory damages requested, if any, are grossly excessive and disproportionate especially in light of the absence of any injury or harm to Plaintiff; therefore, any

award of statutory damages to Plaintiff may constitute excessive fines in violation of Google's due process rights under the U.S. Constitution.

**GOOGLE'S PRAYER FOR RELIEF**

WHEREFORE, Google respectfully prays for judgment as follows:

1. That Plaintiff's claims be dismissed with prejudice;
2. That judgment be entered in favor of Google and against Plaintiff;
3. That Google be awarded its costs of suit, including reasonable attorneys' fees;
4. That the Court award Google such other and further relief as the Court may deem proper.

Dated: April 21, 2022  
New York, New York

Respectfully submitted,

**MAYER BROWN LLP**

By: /s/ A. John P. Mancini  
A. John P. Mancini  
Sara A. Slavin  
1221 Avenue of the Americas  
New York, NY 10020  
Tel.: (212) 506-2500  
jmancini@mayerbrown.com  
sslavin@mayerbrown.com

*Attorneys for Defendants*